

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**IN RE DIGITEK®
PRODUCTS LIABILITY LITIGATION**

MDL NO. 1968

THIS ACTION RELATES TO:

Campbell v. Actavis, 2:08-cv-01075;
Chambers v. Actavis Totowa, LLC, 2:08-cv-01175;
Konek v. Actavis, Inc., 2:08-cv-1053;
Lange v. Actavis Totowa, LLC, 2:09-cv-00448;
Wilburn v. Actavis Group hf, 2:08-cv-01017;
York v. Actavis Totowa, LLC, 2:09-cv-00544

**PLAINTIFFS' MOTION FOR RECONSIDERATION OF
PRETRIAL ORDER #60
(ORDER DENYING CLASS CERTIFICATION)**

Now come Plaintiffs Lorena Ard, Dale Campbell, Alan Chambers, Peter Konek, William E. Lange, Judy Whitaker, as Executrix on behalf of the Estate of Anna Fight, and Willie Maw Wilburn, by counsel, and respectfully move pursuant to Fed. R. Civ. P. 59(e) for this Court to reconsider Pretrial Order #60 denying class certification on the following grounds:

1. The application of New Jersey law to support nationwide class certification is appropriate and the Court's choice of law analysis did not fully consider the District Court of New Jersey's opinion *In re Mercedes-Benz Tele Aid Contract Litig.*, 257 F.R.D. 46, 55, 75 (D.N.J. 2009).
2. Even assuming, *arguendo*, that a nationwide class cannot be certified, the Court's choice of law analysis confirms that the four state-only classes

Plaintiffs requested in their Motion for Class Certification should be certified under Rule 23, as the law of each of the four states would apply to residents of each of those states, and would not raise undue choice of law complexities.

3. The Court unjustifiably found that Plaintiffs' motion failed the predominance prong of Rule 23(b) although the concerns raised by the Court were either hypothetical or could easily be dealt with through the claims administration process; and,
4. Finally, in ruling on Plaintiffs' motion now, the Court unnecessarily rushed the class certification decision-making process when better information will be available after the Court holds bellwether trials. Moreover, by prematurely denying Plaintiffs' Motion for Class Certification, the Court has potentially imperiled the ability of thousands of class members to participate in any settlement due to the loss of *American Pipe* tolling.

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Reconsider Pretrial Order #60 and certify a national class or, alternatively, the four state-only classes requested in Plaintiffs' Motion for Class Certification.
- b. If the Court is not inclined to certify a nationwide class or four state-only classes as requested by Plaintiffs, then Plaintiffs alternatively request that the Court vacate Pretrial Order #60 and postpone the class certification decision until after bellwether trials can be completed.

This motion is also based on the accompanying Memorandum of Law in Support of Plaintiffs' Motion for Reconsideration of Pretrial Order #60 (Order Denying Class

Certification) and the pleadings in the indicated actions, as well as the prior proceedings and orders of this Court concerning class certification.

Dated: June 8, 2010

Respectfully submitted,

On Behalf of the Plaintiffs' Steering Committee

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Proposed Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2010, I electronically filed the foregoing Motion for Reconsideration with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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